

COUNTY CLERK, NEW YORK COUNTY

Application for INDEX NUMBER pursuant to Section 8018,
C.P.L.R.

FEE \$185.00

INDEX NUMBER

Do not write in this space

Space below to be TYPED or PRINTED by applicant

TITLE OF ACTION OR PROCEEDING

Portfolio Financial Servicing Co., as
servicing agent for SFC Capital Group
Corporation

Plaintiff,

-against-

Body Sculpt Fitness Clubs 79th Street
Inc. and Andrew F. Carino, Individually

Defendants.

CHECK ONE

<input checked="" type="checkbox"/> COMMERCIAL ACTION	<input type="checkbox"/> NOT COMMERCIAL ACTION
<input type="checkbox"/> CONSUMER CREDIT TRANSACTION	<input checked="" type="checkbox"/> NOT CONSUMER CREDIT TRANSACTION
<input type="checkbox"/> THIRD PARTY ACTION	<input checked="" type="checkbox"/> NOT THIRD PARTY ACTION

IF THIRD PARTY ACTION
MAIN INDEX NO. _____

02604135

Name and address of Attorney for Plaintiff or Petitioner. Richard L. Furman, Esq., De Orchis & Partners, LLP,
61 Broadway, 26th Floor, New York, NY 10006-2802
Telephone No. (212)-344-4700

Name and address of Attorney for Defendant or Respondent.
Telephone No.

A. Nature and object of action or Breach of Contract
Nature of special proceeding _____

B. Application for Index Number filed by: Plaintiff ☐ Defendant ☒

C. Was a previous Third Party Action filed Yes ☐ No ☒
Date filed _____



B199—Summons without notice, Supreme Court,
personal or substituted service. 12 pt. type, 4-94

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PUBLISHER, NYC 10013

Supreme Court of the State of New York
County of New York

Portfolio Financial Servicing Co., as
servicing agent for SFC Capital Group Corporation

Plaintiff(s)

against

Body Sculpt Fitness Clubs 79th Street Inc. and
Andrew F. Carino, Individually

Defendant(s)

Index No.

Date purchased 02604135

Plaintiff(s) designate(s)

County as the place of trial.

The basis of the venue is
242 East 79th Street, New York,
New York 10021

Summons

Plaintiff(s) reside(s) at

County of

FILED

NOV 13 2002

NEW YORK
COUNTY CLERK'S OFFICE

To the above named Defendant(s)

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated, 11/13/02

Attorney(s) for Plaintiff

Defendant's address:

Office and Post Office Address

Richard L. Furman, Esq.
DeOrchis & Partners, LLP
61 Broadway, 26th Floor
New York, NY 10006-2802
(212) 344-4700

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
PORTFOLIO FINANCIAL SERVICING CO., as
servicing agent for SFC CAPITAL GROUP
CORPORATION

Index No.
Date Purchased:

Plaintiff,

COMPLAINT

- against -

BODY SCULPT FITNESS CLUBS 79TH STREET
INC. and ANDREW F. CARINO, Individually

Defendants.
-----X

02604135

FILED

NOV 15 2008

Plaintiff, Portfolio Financial Servicing Co., as servicing agent for SFC Capital Group Corporation ("SFC"), by its attorneys DeOrchis & Partners, LLP, as and for its Complaint alleges as follows:

1. That at all times hereinafter mentioned, SFC was a corporation organized and existing under the laws of the State of California and had a principal place of business at 1390 Willow Pass Road, Concord, California. SFC is in the business of providing throughout the United States financing for the purchase or lease of various equipment and vehicles.

2. On or about April 28, 2000 SFC filed a voluntary Chapter 11 petition with the United States Bankruptcy Court, Southern District of New York in an action entitled In re: Jacom Computer Services, Inc., Unicapital Corporation, et al.

3. As part of the bankruptcy proceedings, Portfolio Financial Servicing Co. (PFSC) was appointed by the trustee as servicing agent to manage SFC's existing and

delinquent loan and lease agreements and to provide all other necessary services including, but not limited to, collecting bad debts and repossession of equipment

4. Upon information and belief, Defendant Body Sculpt Fitness Clubs 79th Street Inc. ("Body Sculpt") was a corporation organized and existing under the laws of the State of New York, with a principal place of business at 242 East 79th Street, New York, New York.

5. Upon information and belief, Defendant Andrew F. Carino is an individual who at all times referred to herein was president of Body Sculpt and resided at 5 New Street, Eastchester, New York.

AS AND FOR A FIRST CAUSE OF ACTION AGAINST SFC

6. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 5 of the complaint as if fully set forth herein.

7. On or about April 28, 2000, Defendant Body Sculpt entered into a Lease Agreement with Plaintiff agreeing, for valuable consideration received, to pay to Plaintiff the sum of \$76,994.28, in thirty-six (36) monthly installments of \$2,138.73 each, in connection with the lease/purchase of certain gym equipment. Exhibit A.

8. In or around January, 2000 Defendant Body Sculpt defaulted on its obligation ~~by failing and refusing to make any additional payments to Plaintiff.~~

9. Pursuant to the Lease Agreement, in the event of default in payment thereunder, the entire unpaid principal sum of the lease shall be immediately due and payable. The entire unpaid principal sum of the lease is \$60,551.83.

10. Therefore, by reason of the foregoing, Body Sculpt is liable to Plaintiff in the amount of \$60,551.83.

AS AND FOR A SECOND CAUSE OF ACTION AGAINST SFC

11. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 10 of the complaint, as if fully set forth herein.

12. Pursuant to the Lease, in the event of a late payment thereunder, SFC is liable to Plaintiff for late charges equal to seven percent (7%) of the payments in arrears.

13. As of the date of this complaint, Patterson Trucking has failed to remit numerous payments.

14. By reason of the foregoing, Patterson Trucking is liable to Plaintiff for late charges in the amount of at least \$1,283.22.

AS AND FOR A THIRD CAUSE OF ACTION AGAINST ANDREW F. CARINO

15. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 14 of the complaint, as if fully set forth herein.

16. In order to induce Plaintiff to enter into the Lease Agreement and as security to guarantee the payment and performance of all indebtedness and obligations of Defendant Body Sculpt to Plaintiff, Defendant Andrew F. Carino (hereinafter the "guarantor") entered into a personal Guaranty with Plaintiff dated April 28, 2000. Exhibit A.

17. By reason of the foregoing, the guarantor is liable to Plaintiff for all obligations and amounts due and owing under the Lease Agreement.

18. By reason of the foregoing, the guarantor is liable to Plaintiff in the amount of \$60,551.83 and late charges in the amount of at least \$1,283.22.

AS AND FOR A FOURTH CAUSE OF ACTION AGAINST ANDREW F. CARINO

19. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 18 of the complaint, as if fully set forth herein.

20. The Lease Agreement and Guaranty Agreement all provide that in the event of default Defendants will pay all costs of collection, including attorneys fees and expenses, arising out of actions or legal proceedings brought by Plaintiff against Defendants. Exhibit A.

21. On or about October 19, 2001 Plaintiff sent notice to Body Sculpt and the guarantor demanding payment of the deficiency. Exhibit B.

22. Defendants, Body Sculpt and the guarantor failed and refused to pay the deficiency and continue to refuse to pay the amounts owed to Plaintiff.

23. By reason of the foregoing, the Defendants are all jointly and severally liable to Plaintiff for reasonable attorneys fees and expenses in an amount to be determined at trial.

WHEREFORE, Plaintiff demands judgment against Defendants Body Sculpt and Andrew F. Carino as follows:

- (a) On its First Cause of Action against Body Sculpt in the amount of \$60,551.83;
 - (b) On its Second Cause of Action against Body Sculpt in the amount of at least \$1,283.22;
-
- (c) On its Third Cause of Action against Andrew F. Carino in the amount of \$60,551.83 and late charges in the amount of at least \$1,283.22;
 - (d) On its Fourth Cause of Action against Body Sculpt and Andrew F. Carino jointly and severally for reasonable attorneys fees and expenses in an amount to be determined at trial;

- (e) On all counts, interest, costs and fees of this action, together with attorneys fees, and;
- (f) Such other and further relief that this Court may deem just and proper.

Dated: New York, New York
October 23, 2002

DEORCHIS & PARTNERS, LLP
Attorneys for Plaintiff

By: 

Richard L. Furman
61 Broadway, 26th Floor
New York, New York 10006
(212) 344-4700

W:\4255-008\Legals\Complaint 111102.Rlf.Doc 11/12/02-npo

UNICAPITAL®
SFC Capital

TO OUR VALUED CUSTOMER: This Lease has been written in "Plain English". When we use the words you and your in this Lease, we mean you, our customer, which is the Lessee indicated below. When we use the words we, us and our in this Lease, we mean the Lessor, SFC Capital Group Corporation, 1390 Willow Pass Road Suite 850, Concord, CA 94520. (925) 671-9005

CUSTOMER INFORMATION

Lessee Name: Body Sculpt Fitness Clubs 79th Street Inc. Telephone: 212-472-6700 Approval # SFC-3214-001
Billing Street Address/City/State/Zip 242 East 79th Street New York, NY 10021 Lease # ---
Equipment Location (if other from above) 242 East 79th Street New York, NY 10021 Tax ID # 408 8413
13-4

SUPPLIER INFORMATION

Supplier Name: Unisen/StarTrac ("Supplier")
Business Address/City/County/State/Zip 14410 Myford Road Irvine, CA 92606 Supplier Phone # 800-228-6635

EQUIPMENT DESCRIPTION

Quantity See Addendum attached hereto and made a part hereof Make/Model --- Serial Number ---

END OF LEASE PURCHASE OPTION

(Check one applicable box. If no box is checked, the Fair Market Value Purchase Option will apply.)
☐ Fair Market Value Purchase Option ☒ Fixed Price Purchase Option of \$1.00 PLUS APPLICABLE TAXES
☐ Fixed Purchase Option of _____ % of the Total Cash Price

TERM AND SCHEDULE

Lease Term (months) 36 Lease Payment \$2,138.73 You agree to pay at the time you sign this Lease:
Additional Provisions
A) Total Advance Lease Payment @ (Mos.) = \$0.00 PLUS APPLICABLE TAXES
B) Sales/Use Tax on Advance Lease = \$0.00
C) One-time Documentation = \$75.00
D) Total of A + B + C = \$75.00
If more than one Lease Payment is required in advance, the additional amount will be applied at the end of the original or any renewal term.

INSURANCE AND TAXES

You are required to provide and maintain insurance related to the Equipment, and to pay any property, use and other taxes related to this Lease or the Equipment. (See Sections 4 and 6 on the back of this Lease.) If you are tax-exempt, you agree to furnish us with satisfactory evidence of your exemption.

TERMS AND CONDITIONS

BY SIGNING THIS LEASE: (i) YOU ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND THE TERMS AND CONDITIONS ON FRONT AND BACK OF THIS LEASE, (ii) YOU AGREE THAT THIS LEASE IS A NET LEASE THAT YOU CANNOT TERMINATE OR CANCEL, YOU HAVE AN UNCONDITIONAL OBLIGATION TO MAKE ALL PAYMENTS DUE UNDER THIS LEASE, AND YOU CANNOT WITHHOLD, SET OFF OR REDUCE SUCH PAYMENTS FOR ANY REASON, (iii) YOU WILL USE THE EQUIPMENT ONLY FOR BUSINESS PURPOSES, (iv) YOU WARRANT THAT THE PERSON SIGNING THIS LEASE FOR YOU HAS THE AUTHORITY TO DO SO AND TO GRANT THE POWER OF ATTORNEY SET FORTH IN SECTION 7 OF THIS LEASE, (v) YOU CONFIRM THAT YOU DECIDED TO ENTER INTO THIS LEASE RATHER THAN PURCHASE THE EQUIPMENT FOR THE TOTAL CASH PRICE, AND (vi) YOU AGREE THAT THIS LEASE WILL BE GOVERNED BY THE LAWS OF THE STATE OF CALIFORNIA AND YOU CONSENT TO THE JURISDICTION OF ANY COURT LOCATED WITHIN CALIFORNIA YOU AND WE EXPRESSLY WAIVE ANY RIGHTS TO A TRIAL BY JURY.

FC Capital Group Corporation
Lessor

Body Sculpt Fitness Clubs 79th Street Inc.
Lessee

Authorized Signature [Signature]
Print Name & Title S. Galip 1/1/12 Date 4/20/12

Authorized Signature [Signature]
Print Name & Title Andrew F. Carino Pres Date 4/20/12

PERSONAL GUARANTY

HIS PERSONAL GUARANTY CREATES SPECIFIC LEGAL OBLIGATIONS. When we use the words you and your in this "Personal Guaranty", we mean the Personal Guarantor(s) indicated below. When we use the words we, us and our in this Personal Guaranty, we mean the Lessor named above.

In consideration of our entering into the lease agreement identified above ("Lease"), you unconditionally and irrevocably guarantee to us, our successors and assigns, the prompt payment and performance of all obligations of the Customer identified above (Lessee) under the Lease. You agree that this is a guaranty of payment and not of collection, and that we can proceed directly against you without first proceeding against the Lessee or against the equipment covered by the Lease. You waive all defenses and notices, including those of protest, presentment and demand. You agree that we can renew, extend or otherwise modify the terms of the Lease and you will be bound by such changes. If the Lessee defaults under the Lease, you will immediately perform all obligations of the Lessee under the Lease, including but not limited to paying all amounts due under the Lease. You will pay to us all expenses (including attorneys' fees) incurred by us in enforcing our rights against you or the Lessee. This is a continuing guaranty that will not be discharged or affected by your death and will bind your heirs and personal representatives. You waive any rights to seek repayment from the Lessee in the event you must pay us. If more than one personal guarantor has signed this Personal Guaranty, each of you agree that your liability is joint and several. You authorize us or any of our affiliates to obtain credit bureau reports regarding your personal credit and make other credit inquiries that we determine are necessary.

HIS PERSONAL GUARANTY IS GOVERNED BY THE LAWS OF THE STATE OF CALIFORNIA. YOU CONSENT TO THE JURISDICTION OF ANY COURT LOCATED WITHIN CALIFORNIA. YOU EXPRESSLY WAIVE ANY RIGHT TO A TRIAL BY JURY.

Personal Guarantor (no title) [Signature]
Andrew Carino
Print Name
New Street, Eastchester, NY 10709
Home Address
58-56-3703
Social Security Number 917-776-7727
Phone Number

X
Personal Guarantor (no title) _____
Print Name: _____
Home Address: _____
Social Security Number: _____
Phone Number: _____

1. **LEASE; DELIVERY AND ACCEPTANCE.** You agree to lease the equipment described on the front of the lease agreement (collectively "Equipment") on the terms and conditions shown on the front and back of this lease ("Lease"). If you have entered into any purchase or supply contract (collectively "Supply Contract") with any Supplier, you assign to us your rights under such Supply Contract, but none of your obligations (other than the obligation to pay for the Equipment if it is accepted by you as stated below and you timely deliver to us such documents and assurances as we request). If you have not entered into a Supply Contract, you authorize us to enter into a Supply Contract on your behalf. You will arrange for the delivery of the Equipment to you. When you receive the Equipment you agree to inspect it to determine if it is good working order. This Lease will begin on the date when the Equipment is delivered to you and the Equipment will be deemed irrevocably accepted by you upon the earlier of: a) the delivery to us of a signed Delivery and Acceptance Certificate (if requested by us); or b) 10 days after delivery of the Equipment to you if you previously have not given written notice to us of your non-acceptance. The first Lease Payment is due on or before the date the Equipment is delivered to you. The remaining Lease Payments will be due on the day of each subsequent month (or such other time period specified on the front of this Lease) designated by us. You will make all payments required under the Lease to us at such address we may specify in writing. You authorize us to adjust the Lease Payment by not more than 15% if the actual Total Cash Price (which is all amounts we have paid in connection with the purchase, delivery and installation of the Equipment, including any trade-up and buyout amounts) differs from the estimated Total Cash Price of the Equipment. If any Lease Payment or other amount payable to us under this Lease is not paid within 10 days of its due date, you will pay us a late charge not to exceed 7% of each late payment (or such lesser rate as is the maximum rate allowable under applicable law).
2. **NO WARRANTIES. WE ARE LEASING THE EQUIPMENT TO YOU "AS-IS".** YOU ACKNOWLEDGE THAT WE DO NOT MANUFACTURE THE EQUIPMENT, WE DO NOT REPRESENT THE MANUFACTURER OR THE SUPPLIER, AND YOU HAVE SELECTED THE EQUIPMENT AND SUPPLIER BASED UPON YOUR OWN JUDGEMENT. WE MAKE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE. YOU AGREE THAT REGARDLESS OF CAUSE, WE ARE NOT RESPONSIBLE FOR AND YOU WILL NOT MAKE ANY CLAIM AGAINST US FOR ANY DAMAGES, WHETHER CONSEQUENTIAL, DIRECT, SPECIAL, OR INDIRECT. YOU AGREE THAT NEITHER SUPPLIER NOR SALESPERSON, EMPLOYEE OR AGENT OF THE SUPPLIER IS OUR AGENT OR HAS ANY AUTHORITY TO SPEAK FOR US OR BIND US IN ANY WAY. WE TRANSFER TO YOU FOR THE TERM OF EACH SCHEDULED ANY WARRANTIES MADE BY THE MANUFACTURER OR SUPPLIER WITH RESPECT TO THE EQUIPMENT LEASED.
3. **EQUIPMENT LOCATION; USE AND REPAIR; RETURN.** You will keep and use the Equipment only at the Equipment Location shown on the front of this Lease. You may not move the Equipment without our prior written consent. At your own cost and expense, you will keep the Equipment eligible for any manufacturer's certification, in compliance with all applicable laws and in good condition, except for ordinary wear and tear. You will not make any alterations, additions or replacements to the Equipment without our prior written consent. All alterations, additions or replacements will become part of the Equipment and our property at no cost or expense to us. We may inspect the Equipment at any reasonable time. Unless you purchase the Equipment in accordance with this Lease, at the end of this Lease you will immediately deliver the Equipment to us in as good condition as when you received it, except for ordinary wear and tear, to any place in the United States that we tell you. You will pay all expenses of deinstalling, crating and shipping, and you will insure the Equipment for its full replacement value during shipping.
4. **TAXES AND FEES.** You will pay when due, either directly or to us upon demand, all taxes, fines and penalties relating to this Lease or the Equipment that are now or in the future assessed or levied by any state, local or other government authority. We will file all personal property, use or other tax returns (unless we notify you otherwise in writing) and you agree to pay us a fee for making such filings. We do not have to contest any taxes, fines or penalties. You will pay estimated property taxes with each Lease Payment or annually, as invoiced.
5. **LOSS OR DAMAGE.** As between you and us, you are responsible for any loss, theft or destruction of, or damage to, the Equipment (collectively "Loss") from any cause at all, whether or not insured, until it is delivered to us at the end of this Lease and comply with all other Lease obligations even if there is a loss. You are required to make all Lease Payments even if there is a Loss. You must notify us in writing immediately of any Loss. Then, at our option, you will either (a) repair the Equipment so that it is in good condition and working order, eligible to any manufacturer's certification, or (b) pay us the amount specified in Section 9(b) below.
6. **WARRANTY.** You will provide and maintain at your expense (a) property insurance against the loss, theft or destruction of, or damage to, the Equipment for its full replacement value, naming us as loss payee, (b) public liability and third party property insurance, naming us as an additional insured. You will give us certificates or other evidence of such insurance when requested. Such insurance will be in a form, amount and with companies acceptable to us, and will provide that we will be given 30 days advance notice of any cancellation or material change of such insurance. If you do not give us evidence of insurance acceptable to us, we have the right, but not the obligation, to obtain insurance covering our interest in the Equipment for the term of this Lease, including any renewal or extensions, from an insurer of our choice, including an insurer that is our affiliate. We may add the costs of acquiring and maintaining such insurance and our fees for our services in placing and maintaining such insurance (collectively "Insurance Charge") to the amounts due from you under this Lease. You will pay the Insurance Charge in equal installments allocated to the remaining Lease Payments. If we purchase insurance, you will cooperate with our insurance agent with respect to the placement of insurance and the processing of claims. Nothing in this Lease will create an insurance relationship of any type between us and any other person. You acknowledge that we are not required to secure or maintain any insurance, and we will not be liable to you if we terminate any insurance coverage that we arrange. If we replace or renew any insurance coverage, we are not obligated to provide replacement or renewal coverage under the same terms, costs, limits, or conditions as the previous coverage.
7. **TITLE; RECORDING.** We are the owner of and will hold title to the Equipment. You will keep the Equipment free of all liens and encumbrances. Unless the Purchase Option price shown on the front of this Lease is \$1.00, you agree that this transaction is a true lease. However, if the transaction is deemed to be a lease intended for security, you grant us a purchase money security interest in the Equipment (including any replacements, substitutions, additions, attachments and proceeds). You will deliver to us signed financing statements or other documents we request to protect our interest in the Equipment. YOU AUTHORIZE US TO FILE A COPY OF THIS LEASE AS A FINANCING STATEMENT AND APPOINT US OR OUR DESIGNEE AS YOUR ATTORNEY-IN-FACT TO EXECUTE AND FILE, ON YOUR BEHALF, FINANCING STATEMENTS COVERING THE EQUIPMENT.
8. **DEFAULT.** Each of the following is a "default" under this Lease: (a) you fail to pay any Lease Payment or any other payment within 10 days of its due date; (b) you do not perform any of your obligations under this Lease or in any other agreement with us or with any of our affiliates and this failure continues for 10 days after we have notified you of it; (c) you become insolvent, you dissolve or are dissolved, or you assign your assets for the benefit of your creditors, or enter (voluntarily or involuntarily) any bankruptcy or reorganization proceeding; (d) any guarantor of this Lease dies, does not perform its obligations under the guaranty, or becomes subject to one of the events listed in clause (c) above; (e) you fail to keep the Equipment insured as required by Section 6 hereof or (f) you attempt to transfer or encumber the Equipment.
9. **REMEDIES.** If a Default occurs, we may do one or more of the following: (a) we may cancel or terminate this Lease or any or all other agreements that we have entered into with you; (b) we may require you to immediately pay us, as compensations for loss of our bargain and not as a penalty, a sum equal to (i) the present value of all unpaid Lease Payments for the remainder of the term plus the present value of our anticipated residual interest in the Equipment, each discounted at 5% per year, compounded monthly, plus (ii) all other amounts due or that become due under this Lease; (c) we may require you to deliver the Equipment to us as set forth in Section 3; (d) we or our agent may peacefully repossess the Equipment without court order and you will not make any claims against us for damages or trespass or any other reason; and (e) we may exercise any other right or remedy available at law or in equity. You agree to pay all of our costs of enforcing our rights against you, including reasonable attorneys' fees. If we take possession of the Equipment, we may sell or otherwise dispose of it with or without notice, at a public or private sale, and apply the net proceeds (after we have deducted all costs related to the sale or disposition of the Equipment) to the amounts that you owe us. You agree that if notice of sale is required by law to be given, 10 days' notice shall constitute reasonable notice. You will remain responsible for any amounts that are due after we have applied such net proceeds.
10. **ASSIGNMENT. YOU MAY NOT ASSIGN, SELL, TRANSFER OR SUBLEASE THE EQUIPMENT OR YOUR INTEREST IN THIS LEASE.** We may, without notifying you, sell, assign, or transfer this Lease or your interest in the Equipment. YOU AGREE THAT THE NEW OWNER WILL HAVE THE SAME RIGHTS AND BENEFITS THAT WE HAVE NOW UNDER THIS LEASE BUT NOT OUR OBLIGATIONS. THE NEW OWNER WILL NOT BE SUBJECT TO ANY CLAIM, DEFENSE OR SET-OFF THAT YOU MAY HAVE AGAINST US. Following any assignment you will make all payments due under this Lease as directed by the new owner.
11. **PURCHASE OPTION; AUTOMATIC RENEWAL.** If no Default exists under this Lease, you will have the option at the end of the original or any renewal term to purchase all (but not less than all) of the Equipment at the Purchase Option price shown on the front of this Lease, plus any applicable taxes. Unless the Purchase Option price is \$1.00, you must give us at least 30 days written notice before the end of the original term that you will purchase the Equipment or that you will deliver the Equipment to us to an address specified by us. If you do not give us such written notice or if you do not purchase or deliver the Equipment in accordance with the terms and conditions of Lease, this Lease will automatically renew for an additional 12 month term and thereafter renew for successive one month terms until you deliver the Equipment to us. During such renewal(s) the Lease Payment will remain the same. We may cancel an automatic renewal term by sending you written notice 10 days prior to such renewal term. If the Fair Market Value Purchase Option has been selected, we will use our reasonable judgement to determine the Equipment's fair market value. If you do not agree with our determination of the Equipment's fair market value, the fair market value (on a retail basis) will be determined at your expense by an independent appraiser selected by us. Upon payment of the Purchase Option price, we shall transfer our interest in the Equipment to you "AS IS, WHERE IS" without any representation or warranty whatsoever and this Lease will terminate.
12. **INDEMNIFICATION.** You are responsible for any losses, damages, penalties, claims, suits and actions (collectively "Claims"), whether based on a theory of strict liability or otherwise caused by or related to (a) the manufacture, installation, ownership, use, lease, possession, or delivery of the Equipment or (b) any defects in the Equipment. You agree to reimburse us for and if we request to defend us against any Claims.
13. **CREDIT INFORMATION.** YOU AUTHORIZE US OR ANY OF OUR AFFILIATES OR OUR ASSIGNS TO OBTAIN CREDIT BUREAU REPORTS, AND MAKE OTHER CREDIT INQUIRIES THAT WE DETERMINE ARE NECESSARY. ON YOUR WRITTEN REQUEST, WE WILL INFORM YOU WHETHER WE HAVE REQUESTED A CONSUMER CREDIT REPORT AND THE NAME AND ADDRESS OF ANY CONSUMER CREDIT REPORTING AGENCY THAT FURNISHED A REPORT. YOU ACKNOWLEDGE THAT WITHOUT FURTHER NOTICE WE MAY USE OR REQUEST ADDITIONAL CREDIT BUREAU REPORTS TO UPDATE OUR INFORMATION SO LONG AS YOUR OBLIGATIONS TO US ARE OUTSTANDING.
14. **MISCELLANEOUS.** You agree that the terms and conditions contained in this Lease make up the entire agreement between you and us regarding the lease of the Equipment. To the extent permitted by applicable law, you hereby waive any and all rights and remedies conferred upon a lessee by Sections 2A:508 through 2A:522 of the Uniformed Commercial Code. This Lease is not binding on us until we sign it. Any change in any of the terms and conditions of this Lease must be in writing and signed by us. You agree, however, that we are authorized, without notice to you, to supply missing information or correct obvious errors in this Lease. If we delay or fail to enforce any of our rights under this Lease, we will still be entitled to enforce those rights at a later time. All notices shall be given in writing by the party sending the notice and shall be effective when deposited in the U.S. Mail, addressed to the party receiving the notice at its address shown on the front of this Lease (or to any other address specified by that party in writing) with postage prepaid. All representations, warranties, indemnities and covenants made by you under this Lease will survive the termination of this Lease. It is the express intent of the parties not to violate any applicable usury laws or to exceed the maximum amount of time price differential or interest, as applicable, permitted to be charged or collected by applicable law, and any such excess payment will be applied to Lease Payments in inverse order of maturity, and any remaining excess will be refunded to you. If you do not perform any of your obligations under this Lease, we have the right, but not the obligation, to take any action or pay any amounts that we believe are necessary to protect our interests. You agree to reimburse us immediately upon our demand for any such amounts that we pay. If more than one Lessee has signed this Lease, each of you agree that your liability is joint and several.
15. **ACCORD AND SATISFACTION.** No endorsement or statement on any check or any letter accompanying any check or payment of Lease Payment be deemed an accord and satisfaction, and we may accept such check or payment without prejudice to our right to recover the balance of such Lease Payment or pursue other remedy.

Order No: _____
 Entered By _____
 Date _____

For Internal Use Only

Date	04/26/2000
Expiration Date	05/08/2000
Prepared By	Tim D. Andrews
Requested Delivery Date	//
Purchase Order sfc-3214-001	

Division	CM	Zone	13	Class	CI	Sub-Class
S	sfc-3214-001					
O	SFC Capital Group Corporation					
L	1390 Willow Pass, Ste. 350					
D	Concord, CA 94520					
T	Phone: (925) 671-9005					
O						
S	Andy Carino					
H	Body Sculpt Fitness Club					
I	242 East 79th Street					
P	New York, NY 10021					
T						
O	(212) 472-6700					

Qty.	Model	Description	Price	Amount
1	9-3901-BUSAP0	3900 SERIES TREADMILL, NO HR, BLACK, 110 VOLT, USA	3,450.00	\$27,600.00
2	9-4110-BUSAB0	4100 SERIES STEPPER, CONT, BLACK, BLANKET, USA	1,995.00	\$3,990.00
5	9-4310-BUSAB0	4300 SERIES UPRIGHT BIKE, CONT, BLACK, BLANKET, US	1,595.00	\$7,975.00
5	9-4410-BUSAB0	4400 SERIES RECUMBENT BIKE, CONT, BLACK, BLANKET	1,795.00	\$8,975.00
4	9-4620-GUSAP0	ELLIPTICAL EDGE W/ POLAR HEART RATE ONLY	3,195.00	\$12,780.00
24	INSIDE	INSIDE DELIVERY Warranty: 2 Years parts and labor.		
1		Vendor Discount	-1,827.98	\$-1,827.98
		Taxable Amount	\$59,492.02	
		Sales Tax Rate	%	
		Sales Tax		
		Credit Card No.	Expiration Date	
		Total		\$59,492.02
		Check No.	Check Amount	0.00
		FOB	Origin	
		Warranty: Standard	Terms	LEASE

Comments:

Private Comments:

Lease Notes:

Credit Notes:

Lease program
 0 adv. / 36 / \$, .03321, 12 %
 @ \$1975.73 + Tax per month

SFC Capital Group

P.O. Box 281397
Atlanta, GA 30384-1397
(800) 646-8532

October 19, 2001

Andrew F. Carino
5 New Street
Eastchester, N.Y. 10709

Re: Lease No. 1535180001 (Body Sculpt Fitness Club, 79th Street

Dear Guarantor,

As you are well aware, the above-referenced lease is in default. The amount in default at this time is \$ 18,766.93.

Although repeated attempts have been made to get your cooperation in curing the default, payment has not been received; therefore, in accordance with the provisions of your lease agreement we are accelerating the lease and all amounts due under the lease are now due and payable.

The accelerated balance is \$ 61,896.05 and demand is hereby made for payment of the entire amount due. Payment should be directed to SFC Capital Group and received by not later than October 29, 2001. Failure to comply with this demand will leave us no alternative but to take appropriate steps to protect our interests.

Please govern yourself accordingly.

If you have any specific questions you can contact me at 1-800-646-8532 extension 3183.

Sincerely,

Julie A. Smith
Julie A. Smith
Collection Specialist

U.S. Postal Service	
CERTIFIED MAIL RECEIPT	
(Domestic Mail Only. No Insurance Coverage Provided)	
Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$
Postmark Here	
Sent To	
Andrew F. CARINO	
Street, Apt. No., or PO Box No.	
5 New ST.	
City, State, ZIP+4	
EASTCHESTER, N.Y. 10709	

7000 1670 0000 7768 2643

SUPREME COURT OF THE STATE OF NEW YORK

Attorney: DEORCHIS & PARTNERS, LLP

COUNTY OF NEW YORK

PORTFOLIO FINANCIAL SERVICING CO., AS SERVICING AGENT FOR SFC
CAPITAL GROUP CORPORATION

The papers served bore the Index # and
date of filing.

Plaintiff(s)

Index # 604135/02

- against -

Purchased November 13, 2002

BODY SCULPT FITNESS CLUBS 79TH STREET INC., ETANO

Defendant(s)

AFFIDAVIT OF SERVICE

STATE OF NEW YORK: COUNTY OF NEW YORK ss:

STEVEN C. AVERY BEING DULY SWORN DEPOSES AND SAYS DEPONENT IS NOT A PARTY TO THIS ACTION, OVER THE AGE
OF EIGHTEEN YEARS AND RESIDES IN THE STATE OF NEW YORK.

That on December 20, 2002 at 11:00 AM at

SECRETARY OF STATE
ALBANY, NY

deponent served the within SUMMONS AND COMPLAINT on BODY SCULPT FITNESS CLUB 79TH ST INC. S/H/A BODY SCULPT
FITNESS CLUBS 79TH STREET INC. therein named,

SECRETARY OF STATE a Domestic corporation by delivering two true copies to CHERLY BASS, LEGAL CLERK personally, deponent knew
said corporation so served to be the corporation described in said summons as said defendant and knew said
individual to be AUTHORIZED to accept thereof.

Service upon the N.Y.S. Secretary of State under Section 306 of the Business Corporation Law and tendering the required fee.

Deponent further states that he describes the person actually served as follows:

Sex	Skin Color	Hair Color	Age (Approx.)	Height (Approx.)	Weight (Approx)
FEMALE	BLACK	BLACK	25	5'9	165

That at the time of such service deponent knew the person so served as aforesaid to be the same person mentioned and
described as the defendant in this action.

FILED
MAR 20 2003

Sworn to me on December 23, 2002

JOE KNIGHT
Notary Public, State of New York
No. 01KN4808827
Qualified in New York County
Comm. Expires September 30, 2006

MICHAEL SMITH
Notary Public, State of New York
No. 01SM4997428
Qualified in New York County
Comm. Expires June 8, 2006

JOEL GRABER
Notary Public, State of New York
No. 02GR4699723
Qualified in New York County
Comm. Expires February 10, 2006


STEVEN C. AVERY

Invoice #: 317359

SUPREME COURT OF THE STATE NEW YORK

1948

Attorney: DEORCHIS & PARTNERS, LLP

COUNTY OF NEW YORK

PORTFOLIO FINANCIAL SERVICING CO., AS SERVICING AGENT FOR SFC
CAPITAL GROUP CORPORATIONThe papers served bore the index # and
date of filing.

Plaintiff(s)

Index # 604135/02

- against -

BODY SCULPT FITNESS CLUBS 79TH STREET INC., ETANO

Purchased November 13, 2002

Defendant(s)

AFFIDAVIT OF SERVICE

STATE OF NEW YORK: COUNTY OF NEW YORK ss:

STEVEN C. AVERY BEING DULY SWORN DEPOSES AND SAYS DEPONENT IS NOT A PARTY TO THIS ACTION, OVER THE AGE
OF EIGHTEEN YEARS AND RESIDES IN THE STATE OF NEW YORK.

That on December 20, 2002 at 11:00 AM at

SECRETARY OF STATE
ALBANY, NYdeponent served the within SUMMONS AND COMPLAINT on BODY SCULPT FITNESS CLUBS 79TH STREET INC. as BODY SCULPT
FITNESS CLUBS 79TH STREET INC. therein named,SECRETARY OF STATE a Domestic corporation by delivering two true copies to CHERLY BASSLER, Clerk, personally. Deponent knew
said corporation so served to be the corporation described in said summons as said defendant and knew said
individual to be AUTHORIZED to accept thereof.

Service upon the N.Y.S. Secretary of State under Section 306 of the Business Corporation Law and tendering the required fee.

Deponent further states that he describes the person actually served as follows:

Sex	Skin Color	Hair Color	Age (Approx.)	Height (Approx.)	Weight (Approx.)
FEMALE	BLACK	BLACK	25	5'9	165

That at the time of such service deponent knew the person so served as aforesaid to be the same person mentioned and
described as the defendant in this action.

FILED

JAN - 3 2003

COUNTY CLERK'S OFFICE
NEW YORK

Sworn to me on December 23, 2002

JOE KNIGHT
Notary Public, State of New York
No. 01KN4808827
Qualified in New York County
Comm. Expires September 30, 2006MICHAEL SMITH
Notary Public, State of New York
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Qualified in New York County
Comm. Expires June 8, 2006JOEL GRABER
Notary Public, State of New York
No. 02GR4699723
Qualified in New York County
Comm. Expires February 10, 2006

STEVEN C. AVERY

Invoice #: 317359

State of New York 1949 Department of State
 Receipt for Service

Receipt #: 200212230094

Date of Service: 12/20/2002

Service Company: 85 AAA/ALBANY ATTORNEY SERVICES

Cash #: 200212230091
 Fee Paid: \$40 - CHECK

Service was directed to be made pursuant to: SECTION 306 OF THE BUSINESS CORPORATION LAW

Party Served: BODY SCULPT FITNESS CLUB, 79TH ST., INC.

Plaintiff/Petitioner:

PORTFOLIO FINANCIAL SERVICING CO

Name of Plaintiff/Petitioner's Attorney:
 RICHARD L FURMAN, ESQ.

Service of Process Address:

1/O VINCENT GARGIULO
 00 WEST 40TH ST
 NEW YORK, NY 10018

FILED
 MAR 20 2003
 NEW YORK
 COUNTY

004136/02

Secretary of State
 BY CHERYL BASS

Service upon the

Deponent further states that he describes the person actually served as follows:

Sex	Skin Color	Hair Color	Age (Approx.)	Height (Approx.)	Weight (Approx.)
FEMALE	BLACK	BLACK	25	5'9	165

That at the time of such service deponent knew the person so served as aforesaid to be the same person mentioned and described as the defendant in this action.

Sworn to me on December 23, 2002

JOE KNIGHT
 Notary Public, State of New York
 No. 01KN4808827
 Qualified in New York County
 Comm. Expires September 30, 2006

MICHAEL SMITH
 Notary Public, State of New York
 No. 01SM4997428
 Qualified in New York County
 Comm. Expires June 8, 2006

JOEL GRABER
 Notary Public, State of New York
 No. 02GR4699723
 Qualified in New York County
 Comm. Expires February 10, 2006


 STEVEN C. AVERY

Invoice #: 317359

SUPREME COURT OF THE STATE OF NEW YORK

1950

Attorney: DEORCHIS & PARTNERS, LLP

COUNTY OF NEW YORK

PORTFOLIO FINANCIAL SERVICING CO., AS SERVICING AGENT FOR
SEC CAPITAL GROUP CORPORATIONThe papers served bore the index # and
date of filing.

Plaintiff(s)

Index # 604135/02

- against -

Purchased November 13, 2002

BODY SCULPT FITNESS CLUBS 79TH STREET INC., ETANO

Defendant(s)

AFFIDAVIT OF SERVICE

STATE OF NEW YORK: COUNTY OF NEW YORK ss:

JEFF CAMPOLO BEING DULY SWORN DEPOSES AND SAYS DEPONENT IS NOT A PARTY TO THIS ACTION AND OVER THE
AGE OF EIGHTEEN YEARS AND RESIDES IN THE STATE OF NEW YORK.

That on January 2, 2003 at 12:19 PM at

44 COUNTRY ROAD
PRIVATE HOUSE
MAMARONECK, NY 10543

deponent served the within SUMMONS AND COMPLAINT on ANDREW F. CARINO therein named,

AFFIXING
TO DOORby affixing a true copy of each to the door of said premises, which is defendant's dwelling house/usual place of abode
within the state. Deponent was unable, with due diligence to find the defendant or a person of suitable age and
discretion, thereat, having called there on:

December 19, 2002 AT 6:22 PM

December 30, 2002 AT 7:43 AM

January 2, 2003 AT 12:19 PM

MAILING

Deponent enclosed a copy of same in a postpaid wrapper properly addressed to defendant at defendant's last
known residence at44 COUNTRY ROAD
MAMARONECK, NY 10543and deposited said wrapper in a post office or official depository under exclusive care and custody of the United
States Postal Service within New York State on January 8, 2003 by REGULAR FIRST CLASS MAIL in an envelope
marked PERSONAL & CONFIDENTIALSpoke with MRS. DEAK, NEIGHBOR who stated that the defendant lives at the aforementioned address but was
unable to divulge the defendant's place of employment.MILITARY
SERVICEPerson spoken to was asked whether the defendant was in the military service of the State of New York or the United
States and received a negative reply. Upon information and belief based upon the conversation and observation as
aforesaid deponent avers that the defendant is not in the military service of the State of New York or the United States as
that term is defined in the statutes of the State of New York or the Federal Soldiers and Sailors Civil Relief Act.That at the time of such service deponent knew the person so served as aforesaid to be the same person mentioned and
described as the defendant in this action.

Sworn to me on: January 8, 2003

JOE KNIGHT
Notary Public, State of New York
No. 01KN4808827
Qualified in New York County
Comm. Expires September 30, 2006MICHAEL SMITH
Notary Public, State of New York
No. 01SM4997428
Qualified in New York County
Comm. Expires June 8, 2006JOEL GRABER
Notary Public, State of New York
No. 02GR4699723
Qualified in New York County
Comm. Expires February 10, 2006

JEFF CAMPOLO

Invoice #: 319133

MAR 20 2003
NEW YORK
COUNTY CLERK



§ 199— Summons without
personal or substit.

Supreme Court.
2 pt. type, 4-94

1951

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PUBLISHER, NYC 10013

Supreme Court of the State of New York
County of New York

Portfolio Financial Services Co., as
servicing agent for SFC Capital Group Corporation

Plaintiff(s)

against

Body Sculpt Fitness Clubs 79th Street Inc. and
Andrew F. Carino, Individually

Defendant(s)

Index No. 604135-02

Date purchased November 13, 200

Plaintiff(s) designate(s) New York

County as the place of trial.

The basis of the venue is
242 East 79th Street
New York, New York 10021

Amended *Summons*

Plaintiff(s) reside(s) at
2121 SW Broadway, 2nd Floor
Portland, Oregon 97201
County of NEW YORK
COUNTY CLERK'S OFFICE

AUG 13 2003

To the above named Defendant(s)

NOT COMPARED
WITH COPY FILED

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated, July 9, 2003

Attorney(s) for Plaintiff

Office and Post Office Address

Defendant's address:

Body Sculpt Fitness Club 79th Street Inc.
242 East 79th Street
New York, New York 10021
c/o New York Secretary of State
41 State Street
Albany, New York 12231-0001

Richard L. Furman, Esq.
DeOrchis & Partners, LLP
61 Broadway, 26th Floor
New York, New York 10006-2802
(212) 344-4700

Andrew F. Carino
44 Country Road
Mamaroneck, New York 10543



Supreme Court of the State of New York
County of New York

Portfolio Financial Services Co., as
servicing agent for SFC Capital Group Corporation

against

Plaintiff(s)

Body Sculpt Fitness Clubs 79th Street Inc. and
Andrew F. Carino, Individually

Defendant(s)

Index No. 604135-02

Date purchased November 13, 2002

Plaintiff(s) designate(s) New York

County as the place of trial.

The basis of the venue is

242 East 79th Street

New York, New York 10021

Amended *Summons*

Plaintiff(s) reside(s) at

2121 SW Broadway, 2nd Floor

Portland, Oregon 97201

County of

FILED

AUG 13 2003

To the above named Defendant(s)

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated, July 9, 2003

Attorney(s) for Plaintiff

Office and Post Office Address

Defendant's address:

Body Sculpt Fitness Club 79th Street Inc.
242 East 79th Street
New York, New York 10021
c/o New York Secretary of State
41 State Street
Albany, New York 12231-0001

Richard L. Furman, Esq.
DeOrchis & Partners, LLP
61 Broadway, 26th Floor
New York, New York 10006-2802
(212) 344-4700

Andrew F. Carino
44 Country Road
Mamaroneck, New York 10543

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
PORTFOLIO FINANCIAL SERVICING CO., as
servicing agent for SFC CAPITAL GROUP
CORPORATION

Index No. 604135/02

Plaintiff,

AMENDED COMPLAINT

- against -

BODY SCULPT FITNESS CLUBS 79TH STREET
INC. and ANDREW F. CARINO, Individually

Defendants.
-----X

FILED

AUG 13 2003

COUNTY CLERK'S OFFICE
NEW YORK

Plaintiff, Portfolio Financial Servicing Co., as servicing agent for SFC Capital Group Corporation ("SFC"), by its attorneys DeOrchis & Partners, LLP, as and for its Amended Complaint, alleges as follows:

1. That at all times hereinafter mentioned, SFC was a corporation organized and existing under the laws of the State of California and had a principal place of business at 1390 Willow Pass Road, Concord, California. SFC is in the business of providing throughout the United States financing for the purchase or lease of various equipment and vehicles.

2. On or about April 28, 2000 SFC filed a voluntary Chapter 11 petition with the United States Bankruptcy Court, Southern District of New York in an action entitled In re: Jacom Computer Services, Inc., Unicapital Corporation, et al.

3. As part of the bankruptcy proceedings, Portfolio Financial Servicing Co. (PFSC) was appointed by the trustee as servicing agent to manage SFC's existing and delinquent loan

and lease agreements and to provide all other necessary services including, but not limited to, collecting bad debts and repossession of equipment

4. Upon information and belief, Defendant Body Sculpt Fitness Clubs 79th Street Inc. ("Body Sculpt") was a corporation organized and existing under the laws of the State of New York, with a principal place of business at 242 East 79th Street, New York, New York.

5. Upon information and belief, Defendant Andrew F. Carino is an individual who at all times referred to herein was president of Body Sculpt and resided at 5 New Street, Eastchester, New York.

AS AND FOR A FIRST CAUSE OF ACTION AGAINST BODY SCULPT

6. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 5 of the complaint as if fully set forth herein.

7. On or about April 28, 2000, Defendant Body Sculpt entered into a Lease Agreement with Plaintiff agreeing, for valuable consideration received, to pay to Plaintiff the sum of \$76,994.28, in thirty-six (36) monthly installments of \$2,138.73 each, in connection with the lease/purchase of certain gym equipment. Exhibit A.

8. In or around January, 2000 Defendant Body Sculpt defaulted on its obligation by failing and refusing to make any additional payments to Plaintiff.

9. Pursuant to the Lease Agreement, in the event of default in payment thereunder, the entire unpaid principal sum of the lease shall be immediately due and payable. The entire unpaid principal sum of the lease is \$60,551.83.

10. Therefore, by reason of the foregoing, Body Sculpt is liable to Plaintiff in the amount of \$60,551.83.

AS AND FOR A SECOND CAUSE OF ACTION AGAINST BODY SCULPT

11. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 10 of the complaint, as if fully set forth herein.

12. Pursuant to the Lease, in the event of a late payment thereunder, Body Sculpt is liable to Plaintiff for late charges equal to seven percent (7%) of the payments in arrears.

13. As of the date of this complaint, Body Sculpt has failed to remit numerous payments.

14. By reason of the foregoing, Body Sculpt is liable to Plaintiff for late charges in the amount of at least \$1,283.22.

AS AND FOR A THIRD CAUSE OF ACTION AGAINST ANDREW F. CARINO

15. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 14 of the complaint, as if fully set forth herein.

16. In order to induce Plaintiff to enter into the Lease Agreement and as security to guarantee the payment and performance of all indebtedness and obligations of Defendant Body Sculpt to Plaintiff, Defendant Andrew F. Carino (hereinafter the "guarantor") entered into a personal Guaranty with Plaintiff dated April 28, 2000. Exhibit A.

~~17.~~ By reason of the foregoing, the guarantor is liable to Plaintiff for all obligations and amounts due and owing under the Lease Agreement.

18. By reason of the foregoing, the guarantor is liable to Plaintiff in the amount of \$60,551.83 and late charges in the amount of at least \$1,283.22.

AS AND FOR A FOURTH CAUSE OF ACTION AGAINST ANDREW F. CARINO

19. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 18 of the complaint, as if fully set forth herein.

20. The Lease Agreement and Guaranty Agreement all provide that in the event of default Defendants will pay all costs of collection, including attorneys fees and expenses, arising out of actions or legal proceedings brought by Plaintiff against Defendants. Exhibit A.

21. On or about October 19, 2001 Plaintiff sent notice to Body Sculpt and the guarantor demanding payment of the deficiency. Exhibit B.

22. Defendants, Body Sculpt and the guarantor failed and refused to pay the deficiency and continue to refuse to pay the amounts owed to Plaintiff.

23. By reason of the foregoing, the Defendants are all jointly and severally liable to Plaintiff for reasonable attorneys fees and expenses in an amount to be determined at trial.

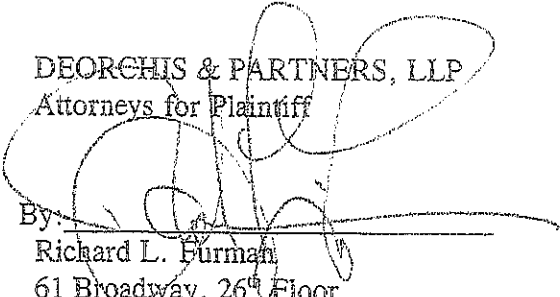
WHEREFORE, Plaintiff demands judgment against Defendants Body Sculpt and Andrew F. Carino as follows:

- (a) On its First Cause of Action against Body Sculpt in the amount of \$60,551.83;
- (b) On its Second Cause of Action against Body Sculpt in the amount of at least \$1,283.22;
- (c) On its Third Cause of Action against Andrew F. Carino in the amount of \$60,551.83 and late charges in the amount of at least \$1,283.22;
- (d) On its Fourth Cause of Action against Body Sculpt and Andrew F. Carino jointly and severally for reasonable attorneys fees and expenses in an amount to be determined at trial;

- (e) On all counts, interest, costs and fees of this action, together with attorneys fees, and;
- (f) Such other and further relief that this Court may deem just and proper.

Dated: New York, New York
July 9, 2003

DEORCHIS & PARTNERS, LLP
Attorneys for Plaintiff

By: 
Richard L. Furman
61 Broadway, 26th Floor
New York, New York 10006
(212) 344-4700

W:\4255-008\Legal\Amendedcomplaint\070203.Doc 6/12/03-RLF

Exhibit

"A"

LEASE AGREEMENT

TO OUR VALUED CUSTOMER: This Lease has been written in "Plain English". When we use the words you and your in this Lease, we mean you, our customer, which is the Lessee indicated below. When we use the words we, us and our in this Lease, we mean the Lessor, SFC Capital Group Corporation, 1390 Willow Pass Road Suite 250, Concord, CA 94524. (925) 671-9065

CUSTOMER INFORMATION

Lessee Name: Body Sculpt Fitness Clubs 79th Street Inc.
 Telephone: 212-472-6700
 Approval # SFC-3214-001
 Billing Street Address/City/State/Zip
 242 East 79th Street New York, NY 10021
 Lease #
 Equipment Location (if other from above)
 242 East 79th Street New York, NY 10021
 Tax ID # 408 8913
 13-444-110-0000

PLIER INFORMATION

Supplier Name: Unisen/StarTrac ("Supplier")
 Business Address/City/County/State/Zip
 14410 Myford Road Irvine, CA 92606
 Supplier Phone # 800-228-6635

EQUIPMENT DESCRIPTION

Quantity See Addendum attached hereto and made a part hereof
 Make/Model
 Serial Number: 55554

PURCHASE OPTION

(Check one applicable box. If no box is checked, the Fair Market Value Purchase Option will apply.)
☐ Fair Market Value Purchase Option
☒ Fixed Price Purchase Option of \$1.00
☐ Fixed Purchase Option of ____% of the Total Cash Price
 PLUS APPLICABLE TAXES

LEASE SCHEDULE

Lease Term (months) 36
 Lease Payment \$2,138.73
 Additional Provisions
 You agree to pay at the time you sign this Lease:
 A) Total Advance Lease Payment @ (Mos.) = \$0.00
 B) Sales/Use Tax on Advance Lease = \$0.00
 C) One-time Documentation = \$75.00
 D) Total of A + B + C = \$75.00
 If more than one Lease Payment is required in advance, the additional amount will be applied at the end of the original or any renewal term.

RANCE TAXES

You are required to provide and maintain insurance related to the Equipment, and to pay any property, use and other taxes related to this Lease or the Equipment. (See Sections 4 and 6 on the back of this Lease.) If you are tax-exempt, you agree to furnish us with satisfactory evidence of your exemption.

TERMS AND CONDITIONS

BY SIGNING THIS LEASE: (i) YOU ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND THE TERMS AND CONDITIONS ON FRONT AND BACK OF THIS LEASE, (ii) YOU AGREE THAT THIS LEASE IS A NET LEASE THAT YOU CANNOT TERMINATE OR CANCEL, YOU HAVE AN UNCONDITIONAL OBLIGATION TO MAKE ALL PAYMENTS DUE UNDER THIS LEASE, AND YOU CANNOT WITHHOLD, SET OFF OR REDUCE SUCH PAYMENTS FOR ANY REASON, (iii) YOU WILL USE THE EQUIPMENT ONLY FOR BUSINESS PURPOSES, (iv) YOU WARRANT THAT THE PERSON SIGNING THIS LEASE FOR YOU HAS THE AUTHORITY TO DO SO AND TO GRANT THE POWER OF ATTORNEY SET FORTH IN SECTION 7 OF THIS LEASE, (v) YOU CONFIRM THAT YOU DECIDED TO ENTER INTO THIS LEASE RATHER THAN PURCHASE THE EQUIPMENT FOR THE TOTAL CASH PRICE, AND (vi) YOU AGREE THAT THIS LEASE WILL BE GOVERNED BY THE LAWS OF THE STATE OF CALIFORNIA AND YOU CONSENT TO THE JURISDICTION OF ANY COURT LOCATED WITHIN CALIFORNIA. YOU AND WE EXPRESSLY WAIVE ANY RIGHTS TO A TRIAL BY JURY.

Capital Group Corporation

Body Sculpt Fitness Clubs 79th Street Inc.

Authorized Signature

Lessee
 X
 Authorized Signature

Name & Title

Andrew F. Carino Pres 4/20/00
 Print Name & Title Date

PERSONAL GUARANTY

PERSONAL GUARANTY CREATES SPECIFIC LEGAL OBLIGATIONS. When we use the words you and your in this "Personal Guaranty", we mean the Person(s) indicated below. When we use the words we, us and our in this Personal Guaranty, we mean the Lessor named above.

creation of our entering into the lease agreement identified above ("Lease"), you unconditionally and irrevocably guarantee to us, our successors and assigns, the prompt and performance of all obligations of the Customer identified above (Lessee) under the Lease. You agree that this is a guaranty of payment and not of collection, and that we may proceed directly against you without first proceeding against the Lessee or against the equipment covered by the Lease. You waive all defenses and notices, including notice, presentment and demand. You agree that we can renew, extend or otherwise modify the terms of the Lease and you will be bound by such changes. If the Lessee under the Lease, you will immediately perform all obligations of the Lessee under the Lease, including but not limited to paying all amounts due under the Lease. You will pay all expenses (including attorneys' fees) incurred by us in enforcing our rights against you or the Lessee. This is a continuing guaranty that will not be discharged or terminated by your death and will bind your heirs and personal representatives. You waive any rights to seek repayment from the Lessee in the event you must pay us. If more than one person has signed this Personal Guaranty, each of you agree that your liability is joint and several. You authorize us or any of our affiliates to obtain credit bureau reports regarding your personal credit and make other credit inquiries that we determine are necessary.

PERSONAL GUARANTY IS GOVERNED BY THE LAWS OF THE STATE OF CALIFORNIA. YOU CONSENT TO THE JURISDICTION OF ANY COURT LOCATED WITHIN CALIFORNIA. YOU EXPRESSLY WAIVE ANY RIGHT TO A TRIAL BY JURY.

Guarantor (no title)

X
 Personal Guarantor (no title)

Carino

Print Name:

e

Home Address:

Street, Eastchester, NY 10709

Address

3703

917-776-7727

Security Number

Phone Number

Social Security Number:

Phone Number

LEASE, DELIVERY AND ACCEPTANCE. You agree to lease the equipment described on the front of the lease agreement (collectively "Equipment") on the terms and conditions shown on the front and back of this lease ("Lease"). If you have entered into any purchase or supply contract (collectively "Supply Contract") with any Supplier, you assign to us your rights under such Supply Contract, but none of your obligations (other than the obligation to pay for the Equipment if it is accepted by you as stated below and you timely deliver to us such documents and assurances as we request). If you have not entered into a Supply Contract, you authorize us to enter into a Supply Contract on your behalf. You will arrange for the delivery of the Equipment to you. When you receive the Equipment you agree to inspect it to determine if it is in good working order. This Lease will begin on the date when the Equipment is delivered to you and the Equipment will be deemed irrevocably accepted by you upon the earlier of: a) the delivery to us of a signed Delivery and Acceptance Certificate (if requested by us); or b) 10 days after delivery of the Equipment to you if you have not given written notice to us of your non-acceptance. The first Lease Payment is due on or before the date the Equipment is delivered to you. The remaining Lease Payments will be due on the day of each subsequent month (or such other time period specified on the front of the Lease) designated by us. You will make all payments required under the Lease to us at such address we may specify in writing. You authorize us to adjust the Lease Payment by not more than 13% if the actual Total Cash Price (which is all amounts we have paid in connection with the purchase, delivery and installation of the Equipment, including any trade-up and buyout amounts) differs from the estimated Total Cash Price the Equipment. If any Lease Payment or other amount payable to us under this Lease is not paid within 18 days of its due date, you will pay us a late charge not to exceed 7% of each late payment (or such lesser rate as is the maximum rate allowable under applicable law).

NO WARRANTIES. WE ARE LEASING THE EQUIPMENT TO YOU "AS-IS". YOU ACKNOWLEDGE THAT WE DO NOT MANUFACTURE THE EQUIPMENT. WE DO NOT REPRESENT THE MANUFACTURER OR THE SUPPLIER, AND YOU HAVE SELECTED THE EQUIPMENT AND SUPPLIER BASED UPON YOUR OWN JUDGEMENT. WE MAKE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE. YOU AGREE THAT REGARDLESS OF CAUSE, WE ARE NOT RESPONSIBLE FOR: (a) YOU WILL NOT MAKE ANY CLAIM AGAINST US FOR ANY DAMAGES, WHETHER CONSEQUENTIAL, DIRECT, SPECIAL, OR INDIRECT; (b) YOU AGREE THAT NEITHER SUPPLIER NOR LESSEEPERSON, EMPLOYEE OR AGENT OF THE SUPPLIER IS OUR AGENT. R HAS ANY AUTHORITY TO SPEAK FOR US OR BIND US IN ANY WAY WE TRANSFER TO YOU FOR THE TERM OF EACH LEASE. WE MAKE NO WARRANTIES MADE BY THE MANUFACTURER OR SUPPLIER WITH RESPECT TO THE EQUIPMENT LEASED.

EQUIPMENT LOCATION; USE AND REPAIR; RETURN. You will keep and use the Equipment only at the Equipment location shown on the front of this Lease. You may not move the Equipment without our written consent. At your own cost and expense, you will keep the Equipment eligible for any manufacturer's certification, in compliance with all applicable laws and in good condition, except for ordinary wear and tear. You will not make any alterations, additions or replacements to the Equipment without our prior written consent. All alterations, additions or replacements will become part of the Equipment and cost you at no cost or expense to us. We may inspect the Equipment at any reasonable time. Unless you purchase the Equipment in accordance with this Lease, at the end of this Lease you will immediately return the Equipment to us in as good condition as when you received it, except for ordinary wear and tear, to any place in the United States that we tell you. You will pay all expenses of dismantling, crating and shipping, and you will insure the Equipment for its full replacement value during shipping.

TAXES AND FEES. You will pay when due, either directly or to us upon demand, all taxes, fees and penalties relating to this Lease or the Equipment that are now or in the future assessed or levied by any state, local or other government authority. We will file all personal property, use or other tax returns (unless we notify you otherwise in writing) and you agree to pay us a fee for making such filings. We do not have to contest any taxes, fees or penalties. You will pay estimated property taxes with each Lease Payment or annually, as invoiced.

LOSS OR DAMAGE. As between you and us, you are responsible for any loss, theft or destruction of, or damage to, the Equipment (collectively "Loss") from any cause at all, whether or not insured, until it is returned to us at the end of this Lease and comply with all other Lease obligations even if there is a loss. You are required to make all Lease Payments even if there is a Loss. You must notify us in writing immediately of any Loss. Then, at our option, you will either: (a) repair the Equipment so that it is in good condition and working order, eligible to any manufacturer's certification, or (b) pay us the amount specified in Section 9(b) below.

1. COVENANTS. You will provide and maintain at your expense (a) property insurance against the loss, theft or destruction of, or damage to, the Equipment for its full replacement value, naming us as loss payee, obligee liability and third party property insurance, naming us as an additional insured. You will give us certificates or other evidence of such insurance when requested. Such insurance will be in a form acceptable to us, and with companies acceptable to us, and we will provide that we will be given 30 days advance notice of any cancellation or material change of such insurance. If you do not give us evidence of insurance acceptable to us, we have the right, but not the obligation, to obtain insurance covering our interest in the Equipment for the term of this Lease, including any renewal or extensions, from an insurer of our choice, including an insurer that is our affiliate. We may add the costs of acquiring and maintaining such insurance and our fees for our services in placing and maintaining such insurance (collectively "Insurance Charge") to the amounts due from you under this Lease. You will pay the Insurance Charge in equal installments allocated to the remaining Lease Payments. If we purchase insurance, you will cooperate with our insurer with respect to the placement of insurance and the processing of claims. Nothing in this Lease will create an insurance relationship of any type between us and any other person. You acknowledge that we are not required to secure or maintain any insurance, and we will not be liable to you if we terminate any insurance coverage that we arrange. If we replace or renew any insurance coverage, we are not obligated to provide replacement or renewal coverage under the same terms, costs, limits, or conditions as the previous coverage.

TITLE; RECORDING. We are the owner of and will hold title to the Equipment. You will keep the Equipment free of all liens and encumbrances. Unless the Purchase Option price shown on the front of this Lease is \$1,000, you agree that this transaction is a true lease. However, if the transaction is deemed to be a lease intended for security, you grant us a purchase money security interest in the Equipment (including replacements, substitutions, additions, attachments and proceeds). You will deliver to us signed financing statements or other documents we request to protect our interest in the Equipment. YOU AUTHORIZE TO FILE A COPY OF THIS LEASE AS A FINANCING STATEMENT AND APPOINT US OR OUR DESIGNEE AS OUR ATTORNEY-IN-FACT TO EXECUTE AND FILE, ON YOUR BEHALF, FINANCING STATEMENTS COVERING THE EQUIPMENT.

DEFAULT. Each of the following is a "default" under this Lease: (a) you fail to pay any Lease Payment or any other payment within 18 days of its due date; (b) you do not perform any of your obligations under this Lease or in any other agreement with us or with any of our affiliates and this failure continues for 10 days after we have notified you of it; (c) you become insolvent, you dissolve or are dissolved, or you assign or assets for the benefit of your creditors, or enter (voluntarily or involuntarily) any bankruptcy or reorganization proceeding; (d) any guarantor of this Lease dies, does not perform its obligations under the Lease, or becomes subject to one of the events listed in clause (c) above; (e) you fail to keep the Equipment insured as required by Section 6 hereof; or (f) you attempt to transfer or encumber the Equipment.

REMEDIES. If a Default occurs, we may do one or more of the following: (a) we may cancel or terminate this Lease or any or all other agreements that we have entered into with you; (b) we may require you to immediately pay us, as compensations for loss of our bargain and not as a penalty, a sum equal to (i) the present value of all unpaid Lease Payments for the remainder of the term plus the present value of our capitalized residual interest in the Equipment, each discounted at 5% per year, compounded monthly, plus (ii) all other amounts due or that become due under this Lease; (c) we may require you to deliver the Equipment to us as set forth in Section 3; (d) we or our agent may peacefully repossess the Equipment without court order and you will not make any claims against us for damages or trespass or any other tort; and (e) we may exercise any other right or remedy available at law or in equity. You agree to pay all of our costs of enforcing our rights against you, including reasonable attorneys' fees. If we take possession of the Equipment, we may sell or otherwise dispose of it with or without notice, at a public or private sale, and apply the net proceeds (after we have deducted all costs related to the sale or disposition of the Equipment) to the amounts that you owe us. You agree that if notice of sale is required by law to be given, 10 days' notice shall constitute reasonable notice. You will remain responsible for any amounts that remain after we have applied such net proceeds.

ASSIGNMENT; YOU MAY NOT ASSIGN, SELL, TRANSFER OR SUBLEASE THE EQUIPMENT OR YOUR INTEREST IN THIS LEASE. We may, without notifying you, sell, assign, or transfer this Lease or your interest in the Equipment. YOU AGREE THAT THE NEW OWNER WILL HAVE THE SAME RIGHTS AND BENEFITS THAT WE HAVE NOW UNDER THIS LEASE BUT NOT OUR OBLIGATIONS. THE NEW OWNER WILL NOT BE SUBJECT TO ANY CLAIM, DEFENSE OR SET-OFF THAT YOU MAY HAVE AGAINST US. Following any assignment you will make all payments due under this Lease as directed by the new owner.

PURCHASE OPTION; AUTOMATIC RENEWAL. If no Default exists under this Lease, you will have the option at the end of the original or any renewal term to purchase all (but not less than all) of the Equipment at the Purchase Option price shown on the front of this Lease, plus any applicable taxes. Unless the Purchase Option price is \$1,000, you must give us at least 30 days written notice before the end of the original term that you will purchase the Equipment or that you will deliver the Equipment to us at an address specified by us. If you do not give us such written notice or if you do not purchase or deliver the Equipment in accordance with the terms and conditions of Lease, this Lease will automatically renew for an additional 12 month term and thereafter renew for successive one month terms until you deliver the Equipment to us. During such renewal(s) the Lease Payment will remain the same. We may cancel an automatic renewal term by sending you written notice 10 days prior to such renewal term. If the Fair Market Value Purchase Option has been selected, we will use our reasonable judgment to determine the Equipment's fair market value. If you do not agree with our determination of the Equipment's fair market value, fair market value (on a retail basis) will be determined at your expense by an independent appraiser selected by us. Upon payment of the Purchase Option price, we shall transfer our interest in the Equipment to you "AS IS, WHERE IS" without any representation or warranty whatsoever and this Lease will terminate.

INDemnIFICATION. You are responsible for any losses, damages, penalties, claims, suits and actions (collectively "Claims"), whether based on a theory of strict liability or otherwise caused by or related to: (a) manufacture, installation, ownership, use, lease, possession, or delivery of the Equipment or (b) any defects in the Equipment. You agree to reimburse us for and if we request, to defend us against, any Claims.

CREDIT INFORMATION. YOU AUTHORIZE US OR ANY OF OUR AFFILIATES OR OUR ASSIGNS TO OBTAIN CREDIT BUREAU REPORTS, AND MAKE OTHER CREDIT INQUIRIES THAT WE DEEM NECESSARY. ON YOUR WRITTEN REQUEST, WE WILL INFORM YOU WHETHER WE HAVE REQUESTED A CONSUMER CREDIT REPORT AND THE NAME AND ADDRESS OF ANY CREDIT REPORTING AGENCY THAT FURNISHED A REPORT. YOU ACKNOWLEDGE THAT WITHOUT FURTHER NOTICE WE MAY USE OR REQUEST ADDITIONAL CREDIT BUREAU REPORTS TO UPDATE OUR INFORMATION SO LONG AS YOUR OBLIGATIONS TO US ARE OUTSTANDING.

MISCELLANEOUS. You agree that the terms and conditions contained in this Lease make up the entire agreement between you and us regarding the lease of the Equipment. To the extent permitted by applicable law, you hereby waive any and all rights and remedies conferred upon a lessee by Sections 2A-508 through 2A-522 of the Uniformed Commercial Code. This Lease is not binding on us until we sign it. Any change in any of the terms and conditions of this Lease must be in writing and signed by us. You agree, however, that we are authorized, without notice to you, to supply missing information or correct errors in this Lease. If we delay or fail to enforce any of our rights under this Lease, we will not be entitled to enforce those rights at a later time. All notices shall be given in writing by the party sending notice and shall be effective when deposited in the U.S. Mail, addressed to the party receiving the notice at its address shown on the front of this Lease (or to any other address specified by that party in writing) by postage prepaid. All representations, warranties, undertakings and covenants made by you under this Lease will survive the termination of this Lease. It is the express intent of the parties not to violate any applicable usury laws or to exceed the maximum amount of time price differential or interest, as applicable, permitted to be charged or collected by applicable law, and any such excess payment will be applied to Lease Payments in inverse order of maturity, and any remaining excess will be refunded to you. If you do not perform any of your obligations under this Lease, we have the right, but not the obligation, to take any action or pay any amounts that we believe are necessary to protect our interests. You agree to reimburse us immediately upon our demand for any such amounts that we pay. If more than one Lessee has signed this Lease, each of you agree that your liability is joint and several.

ACCORD AND SATISFACTION. No endorsement or statement on any check or any letter accompanying any check or payment of Lease Payment be deemed an accord and satisfaction, and we may accept in check or payment without prejudice to our right to recover the balance of such Lease Payment or pursue other remedy.

ORDER

No. _____
Entered By _____
Date _____

For Internal Use Only

Quotation No. 0019577TDA
Date 04/26/2000 Expiration Date 05/08/2000
Prepared By Tim D. Andrews
Requested Delivery Date / /
Purchase Order sfc-3214-001

Division	CM	Zone	13	Class	CI	Sub-Class
sfc-3214-001 SFC Capital Group Corporation 1390 Willow Pass, Ste. 350 Concord, CA 94520 Phone: (925) 671-9005 <div style="text-align: right;">CI</div>						

S Andy Carino
H Body Sculpt Fitness Club
I 242 East 79th Street
P New York, NY 10021

T
O (212) 472-6700

ty.	Model	Description	Price	Amount
-	9-3901-BUSAP0	3900 SERIES TREADMILL, NO HR, BLACK, 110 VOLT, USA	3,450.00	\$27,600.00
2	9-4110-BUSAB0	4100 SERIES STEPPER, CONT, BLACK, BLANKET, USA	1,995.00	\$3,990.00
5	9-4310-BUSAB0	4300 SERIES UPRIGHT BIKE, CONT, BLACK, BLANKET, US	1,595.00	\$7,975.00
5	9-4410-BUSAB0	4400 SERIES RECUMBENT BIKE, CONT, BLACK, BLANKET	1,795.00	\$8,975.00
4	9-4620-GUSAP0	ELLIPTICAL EDGE W/ POLAR HEART RATE ONLY	3,195.00	\$12,780.00
24	INSIDE	INSIDE DELIVERY Warranty: 2 Years parts and labor.		
1		Vendor Discount	-1,827.98	\$-1,827.98
Taxable Amount		\$59,492.02	Sales Tax Rate	%
Credit Card No.		Expiration Date	Total	\$59,492.02
Check No.		Check Amount	0.00	FOB Origin
Warranty: Standard		Terms LEASE		

ments:

ite Comments:

Lease Notes:

Credit Notes:

Lease program
0 adv. / 36 / \$, 03321, 12 %
@ \$1975.73 + Tax per month

Exh.
"B"

Capital Group

Box 281397
Atlanta, GA 30384-1397
(404) 646-8532

October 19, 2001

Andrew F. Carino
5 New Street
Eastchester, N.Y. 10709

Re: Lease No. 1535180001 (Body Sculpt Fitness Club, 79th Street

Dear Guarantor,

As you are well aware, the above-referenced lease is in default. The amount in default at this time is \$ 18,766.93.

Although repeated attempts have been made to get your cooperation in curing the default, payment has not been received; therefore, in accordance with the provisions of your lease agreement we are accelerating the lease and all amounts due under the lease are now due and payable.

The accelerated balance is \$ 61,896.05 and demand is hereby made for payment of the entire amount due. Payment should be directed to SFC Capital Group and received by not later than October 29, 2001. Failure to comply with this demand will leave us no alternative but to take appropriate steps to protect our interests.

Please govern yourself accordingly.

~~If you have any specific questions you can contact me at 1-800-646-8532 extension 3183.~~

Sincerely,

Julie A. Smith
Julie A. Smith
Collection Specialist

U.S. Postal Service	
CERTIFIED MAIL RECEIPT	
(Domestic Mail Only, No Insurance Coverage Provided)	
Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$
Postmark Here	
Sent To	
Andrew F. CARINO	
Street, Apt. No., or PO Box No.	
5 New ST.	
City, State, ZIP+4	
EASTCHESTER, N.Y. 10709	

7000 1670 0000 9228 2643

FILED

AUG 13 2003

COUNTY CLERK'S OFFICE
NEW YORK

SUPREME COURT OF THE STATE NEW YORK — NEW YORK COUNTY

PRESENT: R. Richter

Justice

PART 24

PORTFOLIO FINANCIAL SERVICES

INDEX NO.

604135/02

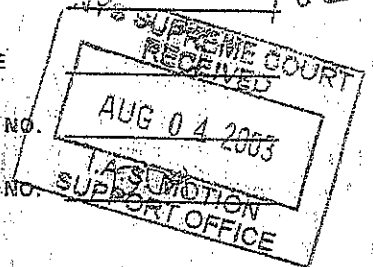
- v -

BODY SCULPT FITNESS CLUBS

MOTION DATE

MOTION SEC. NO.

MOTION CAL. NO.



The following papers, numbered 1 to _____ were read on this motion to/for _____

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: ☐ Yes ☐ No

Upon the foregoing papers, it is ordered that this motion

FILED

AUG 07 2003

NEW YORK
COUNTY CLERKS OFFICE

Motion to Amend ^{summons} and for leave
to Amend complaint granted
on default

MOTION/CASE IS RESPECTFULLY REFERRED TO
JUSTICE

Dated: 8/1/01

Check one: ☐ FINAL DISPOSITION

HON. ROSALYN RICHTER S.C.
☐ NON-FINAL DISPOSITION

REQUEST FOR JUDICIAL INTERVENTION

UCS-840 (REV 1/2000)

New York Supreme Court New York 604135-02
COURT COUNTY INDEX NO.

November 13, 2002
DATE PURCHASED

PLAINTIFF(S):

Portfolio Financial Services Co., as servicing agent
for SFC Capital Group Corporation

DEFENDANT(S):

Body Sculpt Fitness Clubs 79th Street, Inc. and
Andrew F. Carino, Individually

For Clerk Only

7-18-03

IAS entry date

Judge Assigned

7-24-03

RJI Date

COMMERCIAL
JUDGE

Date issue joined: _____ Bill of particulars served (Y/N): ☒ Yes ☐ No

NATURE OF JUDICIAL INTERVENTION (check ONE box only AND enter information)

- | | |
|--|--|
| <input type="checkbox"/> Request for preliminary conference | <input type="checkbox"/> Notice of petition (return date: _____)
Relief sought _____ |
| <input type="checkbox"/> Note of issue and/or certificate of readiness | <input type="checkbox"/> Notice of medical or dental malpractice action (specify: _____) |
| <input checked="" type="checkbox"/> Notice of motion (return date: 07-24-03)
Relief sought amendment of summons and complaint | <input type="checkbox"/> Statement of net worth |
| <input type="checkbox"/> Order to show cause
(clerk enter return date: _____)
Relief sought _____ | <input type="checkbox"/> Writ of habeas corpus |
| <input type="checkbox"/> Other ex parte application (specify: _____) | <input type="checkbox"/> Other (specify: _____) |

NATURE OF ACTION OR PROCEEDING (Check ONE box only)

MATRIMONIAL

- | | |
|--------------------------------------|-----|
| <input type="checkbox"/> Contested | -CM |
| <input type="checkbox"/> Uncontested | -UM |

COMMERCIAL

- | | |
|---|-------|
| <input checked="" type="checkbox"/> Contract | -CONT |
| <input type="checkbox"/> Corporate | -CORP |
| <input type="checkbox"/> Insurance (where insurer is a party, except arbitration) | -INS |
| <input type="checkbox"/> UCC (including sales, negotiable instruments) | -UCC |
| <input type="checkbox"/> *Other Commercial | -OC |

REAL PROPERTY

- | | |
|---|-------|
| <input type="checkbox"/> Tax Certiorari | -TAX |
| <input type="checkbox"/> Foreclosure | -FOR |
| <input type="checkbox"/> Condemnation | -COND |
| <input type="checkbox"/> Landlord/Tenant | -LT |
| <input type="checkbox"/> *Other Real Property | -ORP |

OTHER MATTERS

- | | |
|-----------------------------------|------|
| <input type="checkbox"/> CONTRACT | -OTH |
|-----------------------------------|------|

TORTS

MALPRACTICE

- | | |
|--|------|
| <input checked="" type="checkbox"/> Medical/Podiatric | -MM |
| <input type="checkbox"/> Dental | -DM |
| <input type="checkbox"/> *Other Professional | -OPM |
| <input type="checkbox"/> Motor Vehicle | -MV |
| <input type="checkbox"/> *Products Liability | -PL |
| <input type="checkbox"/> Environmental | -EN |
| <input type="checkbox"/> Asbestos | -ASB |
| <input type="checkbox"/> Breast Implant | -BI |
| <input type="checkbox"/> *Other Negligence | -OTN |
| <input type="checkbox"/> *Other Tort (including intentional) | -OT |

SPECIAL PROCEEDINGS

- | | |
|---|----------|
| <input type="checkbox"/> Art. 75 (Arbitration) | -ART75 |
| <input type="checkbox"/> Art. 77 (Trusts) | -ART77 |
| <input type="checkbox"/> Art. 78 | -ART78 |
| <input type="checkbox"/> Election Law | -ELEC |
| <input type="checkbox"/> Guardianship (MHL Art. 81) | -GUARD81 |
| <input type="checkbox"/> *Other Mental Hygiene | -MHYG |
| <input type="checkbox"/> *Other Special Proceeding | -OSP |

9-8-03
45 DAY RULE DATE:

COL OF NEW
FOLIO FINA
ITAL GRO

Check "YES" or "NO" for each of the following questions:

Is this action/proceeding against a

YES NO

☐ ☒ Municipality:
(Specify _____)

YES NO

☐ ☒ Public Authority:
(Specify _____)

YES NO

☐ ☒ Does this action/proceeding seek equitable relief?
☐ ☒ Does this action/proceeding seek recovery for personal injury?
☐ ☒ Does this action/proceeding seek recovery for property damage?

Pre-Note Time Frames:

(This applies to all cases except contested matrimonials and tax certiorari cases)

Estimated time period for case to be ready for trial (from filing of RJ1 to filing of Note of Issue):

☒ Expedited: 0-8 months

☐ Standard: 9-12 months

☐ Complex: 13-15 months

Contested Matrimonial Cases Only: (Check and give date)

Has summons been served?

☐ No

☐ Yes, Date _____

Was a Notice of No Necessity filed? ☐ No

☐ Yes, Date _____

ATTORNEY(S) FOR PLAINTIFF(S):

<u>Self Rep.</u>	<u>Name</u>	<u>Address</u>	<u>Phone #</u>
<input type="checkbox"/>	Richard L. Furman, Esq.	61 Broadway, 26th Flr.	212-344-4700
<input type="checkbox"/>	DeOrchis & Partners, LLP	New York, NY 10006	

ATTORNEY(S) FOR DEFENDANT(S):

<u>Self Rep.</u>	<u>Name</u>	<u>Address</u>	<u>Phone #</u>
<input type="checkbox"/>			
<input type="checkbox"/>			

"Self Represented: parties representing themselves, without an attorney, should check the "Self Rep." box and enter their name, address, and phone # in the space provided above for attorneys.

INSURANCE CARRIERS:

RELATED CASES: (IF NONE, write "NONE" below)

<u>Title</u>	<u>Index #</u>	<u>Court</u>	<u>Nature of Relationship</u>
--------------	----------------	--------------	-------------------------------

I AFFIRM UNDER PENALTY OF PERJURY THAT, TO MY KNOWLEDGE, OTHER THAN AS NOTED ABOVE, THERE ARE AND HAVE BEEN NO RELATED ACTIONS OR PROCEEDINGS, NOR HAS A REQUEST FOR JUDICIAL INTERVENTION PREVIOUSLY BEEN FILED IN THIS ACTION OR PROCEEDING.

Dated:

(SIGNATURE)

Richard L. Furman, Esq.

(PRINT OR TYPE NAME)

Plaintiff

ATTORNEY FOR

ATTACH RIDER SHEET IF NECESSARY TO PROVIDE REQUIRED INFORMATION

DO NOT L SH

\$185.00

RECEIPT
NEW YORK COUNTY CLERK
60 CENTRE STREET
NEW YORK, NY 10007
R141

Title of Action or Proceeding to be TYPED or PRINTED by applicant
SUPREME COURT, NEW YORK COUNTY

V.

02604135

DESCRIPTION	AMOUNT
30 COMMERCIAL	160.00
7 SURCHARGE	25.00
TOTAL	185.00
CASH	185.00

CASHIER	DATE	TIME	TERM
7726 1235	02 NOV 13	3:46 PM	41-2

4255-008

RES
Q

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
PORTFOLIO FINANCIAL SERVICING CO., as
servicing agent for SFC CAPITAL GROUP
CORPORATION

M0000530

Index No. 604135/02

Plaintiff,

- against -

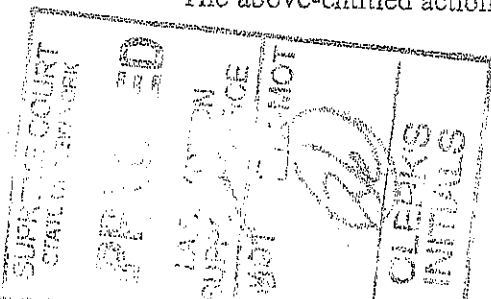
BODY SCULPT FITNESS CLUBS 79TH STREET
INC. and ANDREW F. CARINO, Individually

Defendants.
-----X

NOTICE OF MOTION
TO AMEND SUMMONS
AND OF MOTION FOR LEAVE TO
AMEND COMPLAINT

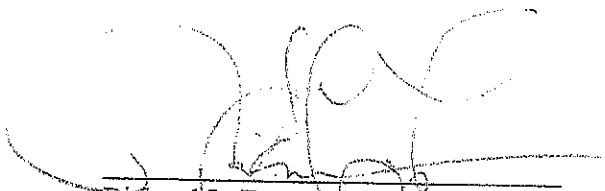
PLEASE TAKE NOTICE, that upon the affidavit of Richard L. Furman, sworn to the 9th day of July, 2003, the summons and complaint heretofore served herein and the proposed amended summons and proposed amended complaint, all of which are annexed hereto, a motion pursuant to CPLR 305 (c) and a motion pursuant to CPLR 3025 (b) will be made at a Term of this court before the Motion Support Office, room 130, to be held at the courthouse thereof, located at 60 Centre Street, on the 24th day of July, 2003, at 9:30 o'clock in the morning of that day, or as soon thereafter as counsel can be heard, for an order amending the summons to conform with the proposed amended summons, upon the ground that the original summons failed to specify the index number, the date the index number was purchased, the plaintiff's address, and the defendants' addresses, and for such other and further relief as may be just, proper and equitable and for an order amending the complaint to conform with the proposed amended complaint, on the ground that the original complaint contained clerical errors.

The above-entitled action was brought for breach of contract.



FILED
AUG 07 2003
NEW YORK
COUNTY CLERK'S OFFICE

Dated: New York, New York
July 9, 2003



Richard L. Furman, Esq.
DeOrchis & Partners, LLP
Attorneys for Plaintiff
61 Broadway, 26th Floor
New York, New York 10006-2802
(212) 344-4700

To: Body Sculpt Fitness Club 79th Street Inc.
242 East 79th Street
New York, New York 10021
c/o New York Secretary of State
41 State Street
Albany, New York 12231-0001

Andrew F. Carino
44 Country Road
Mamaroneck, New York 10543

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
PORTFOLIO FINANCIAL SERVICING CO., as
servicing agent for SFC CAPITAL GROUP
CORPORATION

Plaintiff,

- against -

BODY SCULPT FITNESS CLUBS 79TH STREET
INC. and ANDREW F. CARINO, Individually

Defendants.
-----X

AFFIDAVIT IN SUPPORT OF
MOTION TO AMEND SUMMONS
AND MOTION FOR LEAVE TO SERVE
AMENDED COMPLAINT FORM

Index No. 604135/02

Richard L. Furman, being duly sworn, deposes and says:

1. I am the attorney for the plaintiff in the above entitled action, and am familiar with all of the facts and circumstances heretofore had herein. This action was commenced by the service of a summons and complaint on the 20th day of December, 2002, personally, within the State of New York against Body Sculpt Fitness Clubs 79th Street Inc. and on the 2nd day of January, 2003, personally, within the State of New York, against Andrew F. Carino. The index number of this action is 604135/02.

2. The above entitled action was brought against the defendants for breach of contract

3. Annexed hereto, and marked as Exhibit "A," is a copy of the summons originally served in this action on all defendants. The summons heretofore served failed to specify an index number, the date of purchase of the index number, plaintiff's address and defendants' addresses.

4. The proposed amended summons, marked Exhibit "B" hereto, contains the index number, the date of purchase of the index number, plaintiff's address and defendants' addresses.

5. Amendment of the summons will not prejudice any substantial right of the defendant because the omissions referred to in paragraph 4 are mere irregularities and are not jurisdictional defects.

6. Annexed hereto, and marked as Exhibit "C," is a copy of the complaint originally served in this action on all defendants. The complaint contains the following clerical errors: (i) "SFC" is incorrectly mentioned in the heading for the first cause of action on page 2; (ii) "SFC" is incorrectly mentioned in the heading for the second cause of action on page 3 ; (iii) "SFC" is incorrectly mentioned in paragraph 12; and (iv) "Patterson Trucking" is incorrectly mentioned in paragraphs 13 and 14.

7. The proposed amended complaint, marked as Exhibit "D" hereto, incorporates correction of the clerical errors set forth in paragraph 6. Such corrections are as follows: (i) "SFC" is replaced with "Body Sculpt" in the heading for the first cause of action on page 2; (ii) "SFC" is replaced with "Body Sculpt" in the heading for the second cause of action on page 3; (iii) "SFC" is replaced with "Body Sculpt" in paragraph 12; and (iv) "Patterson Trucking" is replaced with "Body Sculpt" in paragraphs 13 and 14.

8. The only respect in which the proposed amended complaint differs from the original complaint is in the correction of clerical errors. ~~It is evident, therefore, that there is no change in~~
the nature or substance of the cause of action.

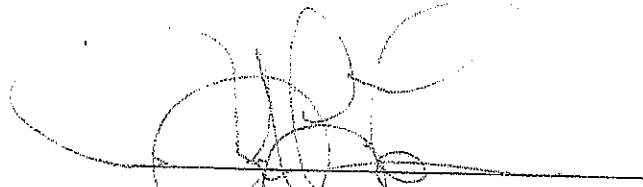
9. No previous application for the relief herein prayed for has been made.

10. Your deponent has fully and fairly stated the facts and has a good and meritorious cause of action.

WHEREFORE, deponent respectfully asks for an order granting leave to amend the

summons herein to conform with the annexed proposed amended summons and an order permitting him to serve an amended complaint in accordance with the annexed proposed amended complaint.

Dated: New York, New York
July 9, 2003

A handwritten signature in dark ink, appearing to be 'R. Furman', written over a horizontal line.

Richard L. Furman, Esq.

Exhibit A^u

Supreme Court of the State of New York
County of New York

Portfolio Financial Servicing Co., as
servicing agent for SEC Capital Group Corporation

Plaintiff(s)

against

Body Sculpt Fitness Clubs 79th Street Inc. and
Andrew F. Carino, Individually

Defendant(s)

Index No.

Date purchased

Plaintiff(s) designate(s)

County as the place of trial.

The basis of the venue is
242 East 79th Street, New York,
New York 10021

Summons

Plaintiff(s) reside(s) at

County of

To the above named Defendant(s)

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated, 11/13/02

Defendant's address:

Attorney(s) for Plaintiff

Office and Post Office Address

Richard L. Furman, Esq.
DeOrchis & Partners, LLP
61 Broadway, 26th Floor
New York, NY 10006-2802
(212) 344-4700

Exhibit B²

Supreme Court.
Substituted service. 12 pt. type, 4-94

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PUBLISHER, NYC 10013

Supreme Court of the State of New York
County of New York

Portfolio Financial Services Co., as
servicing agent for SFC Capital Group Corporation

Plaintiff(s)
against

Body Sculpt Fitness Clubs 79th Street Inc. and
Andrew F. Carino, Individually

Defendant(s)

Index No. 604135-02

Date purchased November 13, 2002

Plaintiff(s) designate(s) New York

County as the place of trial.

The basis of the venue is

242 East 79th Street

New York, New York 10021

Amended *Summons*

Plaintiff(s) reside(s) at

2121 SW Broadway, 2nd Floor

Portland, Oregon 97201

County of

To the above named Defendant(s)

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within _____ days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated, July 9, 2003

Attorney(s) for Plaintiff

Office and Post Office Address

Defendant's address:

Body Sculpt Fitness Club 79th Street Inc.
242 East 79th Street
New York, New York 10021
c/o New York Secretary of State
41 State Street
Albany, New York 12231-0001

Richard L. Furman, Esq.
DeOrchis & Partners, LLP
61 Broadway, 26th Floor
New York, New York 10006-2802
(212) 344-4700

Andrew F. Carino
44 Country Road
Mamaroneck, New York 10543

Exhibit C